

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for)	ET Docket No. 04-295
Law Enforcement Act and)	
Broadband Access and Services)	RM-10865
)	

**REPLY COMMENTS OF COLUMBIA UNIVERSITY AND
THE UNIVERSITY OF PENNSYLVANIA**

The Trustees of Columbia University in the City of New York (“Columbia”) and the University of Pennsylvania (“Penn”) (together “the Universities”) hereby submit the following comments in response to the Report and Order and Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (the “Commission”) in the above-captioned proceeding (the “Order”). In the Order, the Commission determined that the assistance provisions of the Communications Assistance for Law Enforcement Act (“CALEA”) apply to facilities-based Internet access providers and providers of interconnected voice over Internet services. The Commission also requested comments on, among other matters, whether “providers of broadband networks for educational and research institutions . . . should be exempt from CALEA.” Order at para. 49.

Like other higher education and research institutions, Columbia and Penn each operate private networks for their own internal purposes. Some of these private networks connect to the public Internet. Each university deploys broadband networks for use by its own faculty, students and affiliated institutions, and for other purposes relating to the

universities' educational missions. Neither Columbia nor Penn is an Internet access provider; each university obtains Internet access through commercial Internet service providers ("ISPs"). For example, Columbia's private network interconnects with such commercial ISPs at carrier hotels in New York City. In each carrier hotel, a router operated by Columbia is interconnected to routers operated by the ISPs through high capacity links. Penn's private network interconnects with commercial ISPs in Philadelphia using this same model.

The Universities understand that higher education and research institutions generally obtain Internet access in this manner: the router operated by the institution is connected directly or indirectly by one or more high capacity links to the routers of one or more ISPs, from whom the institutions purchase Internet access. In fact, this typical configuration of higher education and research institution private networks is similar to the typical configuration of private networks operated by commercial enterprises.

In the operation of their private networks, the Universities cooperate with law enforcement in full accordance with requirements of law. As part of these legal responsibilities, Columbia and Penn each have in place procedures for prompt and efficient response to lawful process.

The Universities note that CALEA exempts private networks from the assistance requirements. *See* Section 103(b)(2)(B). In the Order, the Commission acknowledged that certain higher education and research institution networks are private networks exempt from CALEA. In recognition of the statutory prohibition on application of the assistance requirements to such private networks, the Commission provided a methodology for determining the point of demarcation between such private networks

and the public networks with which they interconnect. Order at footnote 100. The statutory exemption already precludes the application of the CALEA assistance requirements to such private networks operated by higher education and research institutions. The Universities respectfully submit that the Commission need not waive the application of assistance requirements to such private networks, because it cannot as a matter of law impose such requirements in the first place.

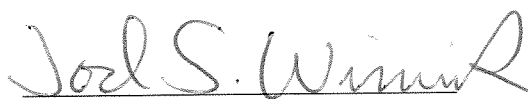
Despite the statutory exemption, this proceeding has raised substantial uncertainty among higher education and research institutions as to whether some or all of them would be required to reengineer their networks in derogation of Section 103(b)(2)(B). In the original Notice of Proposed Rulemaking in this proceeding, the Commission suggested that some private networks might be classified as public based on their size or their number of users.¹ This notion was never raised in the context of higher education institutions, and was properly discarded in the adoption of the final rule in favor of the correct principle set out in footnote 100 of the Order. However, the Order exacerbated concerns expressed by higher education and research institutions by requesting comments on the matter of whether “providers of broadband networks for educational and research institutions . . . should be exempt from CALEA.” As noted above, private networks operated by higher education and research institutions already are exempt from CALEA assistance requirements as a matter of law.²

¹ The NPRM noted that non-managed VoIP services and other “private” networks with a potentially unlimited number of users might be found to be more public than private. NPRM at para. 58, footnote 167. In no event could it be said that the Universities’ private networks serve unlimited users.

² The Commission determined in the Order that the so-called Substantial Replacement Provision (the “SRP”) under Section 102(8)(B)(ii) of CALEA permitted it to ignore the statutory exemption from the assistance requirements applicable to information service providers. Whatever the validity of that finding, the Commission has made no such finding with respect to the private network exemption. On the contrary,

In view of the uncertainty among certain higher education and research institutions, which has resulted in scores of filings in this proceeding from such institutions small and large, and even to judicial appeals of the Order, the Commission should set these concerns to rest by clarifying that the private network exemption generally applies to higher education and research institutions. Moreover, in any unique case where such restriction or exemption would not apply, the Commission should impose more limited and narrowly tailored obligations on higher education and research institutions.

Respectfully submitted,

A handwritten signature in dark ink, reading "Joel S. Winnik". The signature is fluid and cursive, with a large, stylized "W" at the end.

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the Commission has specifically recognized that the private network exemption applies to networks operated by higher education and research institutions.